ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ILLINOIS.[2]

COURT OF ERRORS AND APPEALS OF MARYLAND.[3]

SUPREME JUDICIAL COURT OF MASSACHUSETTS.[4]

ADMIRALTY.

Practice—Amendment of Libel on Appeal to the Circuit Court—Collision—Evidence—Findings of Board of Local Inspectors.—Where certain claims for damage were rejected by the District Court because not included in the original libel, *held*, that the Circuit Court on appeal could in its discretion permit libellants to file a supplemental and amended libel setting up such claims: *The North Carolina*, 15 Pet. 40, distinguished: *The Charles Morgan*, S. C. U. S., Oct. Term 1884.

The findings of the board of local inspectors, and the documents connected therewith, in a proceeding instituted under Rev. Stat., sect. 4450, for an investigation of the facts connected with a collision, so far as they had a bearing on the conduct of the licensed officers on board the boats, are inadmissible in a collision suit in admiralty when offered by the defendants as tending to affect the evidence offered by the libellants to show that their boat was in her proper position and had proper watches and lights set at the time of the collision: *Id.*

AGENT. See *Bank; Common Carrier.*

Contract—Association of Railroad Companies—Partnership—Contract by one Company, whether Binding on all—Rebate of Freight—Evidence—Ratification.—Where a combination or association of three or four different railroad companies is formed for the transportation of freight and the transaction of the business of a common carrier, which is conducted by the general managers of each of the component companies, as in the case of a partnership, so long as one of the companies acts within the general scope of its powers in making contracts or performing other acts on behalf of the association, the association itself will be bound, although the particular company acting for it has exceeded its authority, as tested by its laws or articles of association: *The Erie and Pacific Despatch* v. *Cecil*, 112 Ill.

A contract of a railway company or association of such companies, made by its usual agents, with a shipper, to ship and carry a large quantity of grain at a reduced rate, which is five cents on the hundred pounds less than the customary rates, but that the same should be billed at the regular rates then current and the freight paid at the latter rates, the difference in the two rates to be forthwith paid back to the shipper is valid and binding on the company or companies making the same: *Id.*

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[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1884. The cases will probably appear in 115 U. S. Rep.

[2] From Hon. N. L. Freeman, Reporter; to appear in 112 Ill. Rep.

[3] From J. Shaaff Stockett, Esq., Reporter; to appear in 63 Md. Rep.

[4] From John Lathrop, Esq., Reporter; to appear in 138 Mass. Rep.

In a suit against an association of railway companies on a contract made by a local agent of one of the companies, the defendant offered in evidence the articles of agreement between the several companies composing the association, for the purpose of showing a want of power in the local agents to make the contract: *Held*, that they were not admissible in evidence against the plaintiff, as the public could not be bound by them, or the rules and regulations they might contain: *Id.*

To prove the ratification of a special contract made by a station agent of a railway company in this state, which company, with others, constituted an association in the nature of a partnership, it appearing that the general manager of the same company approved such contract, the plaintiff offered in evidence three telegrams between the general manager of the railway company and the general manager of the association, showing that though the first had exceeded his orders, the latter would protect him: *Held*, that the telegrams were competent evidence on that question: *Id.*

Where the general manager of an association of railway companies has notice of the existence and terms of a special contract for transporting grain at a reduced rate, made by an agent of one of the associated companies, and afterward furnishes cars and transports the grain, this is evidence from which a ratification of the special contract may be found: *Id.*

ATTACHMENT. See *Husband and Wife.*

ATTORNEY.

Liability for Costs.—An attorney at law, who places his name under the words "From the office of," on the back of a writ in favor of a resident of another state, is liable, as endorser, for costs: *Morrill* v. *Lamson*, 138 Mass.

If an attorney at law endorses a writ in favor of a resident of another state, he cannot set up in defence to a *scire facias* to enforce a judgment for costs awarded against such party, that, in so doing, he violated a rule of the court, prohibiting an attorney from becoming bail or surety in any civil suit or proceeding in which he is employed as such attorney: *Id.*

BANK.

Certificate of Deposit—Principal and Agent—Notice—Subrogation.—S. S. deposited a sum of money in bank and received a certificate of deposit, setting forth the deposit of the money by him, and stating that the same was payable to the order of himself, or of E. S., on the return of the certificate. Before the money was withdrawn, S. S. died. After his death, E. S., who was his wife, presented the certificate, and drew from the bank the amount of the deposit: *Held*, 1st. That the certificate of deposit did not authorize the payment of the money to E. S. after the death of S. S. 2d. That notice to the paying-teller of the bank, of the death of S. S., received prior to the payment by him to E. S. of the amount of the deposit, was notice to the bank. 3d. That if he in making the payment, after such notice, mistook the law, the bank whose agent he was, must suffer the consequences: *Second Nat. Bank* v. *Wrightson*, 63 Md.

The bank filed a bill in equity, to enjoin the prosecution of an action at law against it for the money deposited by S. S., brought by his executor; and to have the certificate reformed, as not having been drawn in conformity with the agreement of the parties. The evidence failed to establish a case for reformation of the certificate, but it was developed in the proof, that a part of the money drawn by E. S., went directly to the payment of the debts and funeral expenses of S. S. On appeal it was *Held*: That the court below committed no error in retaining the bill, and under the prayer for general relief, allowing the bank a credit for the amount of the money drawn by E. S., that went directly to pay the debts and funeral charges of S. S., and for which the executor had obtained a credit in his administration account: *Id.*

BILLS AND NOTES. See *Evidence.*

CHARITY

Charitable Institution—Not liable for wrongful Acts of Employees.—The house of refuge, being a corporation instituted for charitable purposes, cannot be made liable in an action for damages, for an assault committed by one of its officers on an inmate of the institution: *Perry* v. *The House of Refuge*, 63 Md.

Damages cannot be recovered from a fund held in trust for charitable purposes; they must be recovered from the wrongdoer: *Id.*

COMMON CARRIER. See *Agent.*

Presumption of Negligence—Burden of Proof—Injury to Passenger before entering Train.—The carrier is bound to exercise the greatest care and diligence in everything that concerns the safety of passengers: and if one is injured by the breaking down or upsetting of the vehicle used in the transportation, or by the colliding of one train with another, or by the train running off the track from some defect in the roadbed, in these, and in other like cases, the evidentiary facts in themselves create a presumption of negligence on the part of the carrier: *Baltimore & Ohio Railroad Co.* v. *Mahone*, 63 Md.

Under such circumstances, the carrier must show that the accident happened in spite of the exercise by him and his servants, of the greatest degree of care and diligence practicable under the circumstances: *Id.*

Although the burden of proof is on the plaintiff to show that the injury was occasioned by the negligence of the defendants, yet he discharges this burden and makes out a *prima facie* case by showing that the accident happened through the failure of some of the means used by the carrier in making the transit: *Id.*

To create the relation of carrier and passenger, it is not necessary that the latter should actually have entered the train. If he had purchased a ticket and was crossing the track by and under the direction of the ticket agent, for the purpose of taking the train, he is to be considered as a passenger, and as such entitled to all the rights and protection of one: *Id.*

Railroad—Conditions of Ticket—Statements of Gatekeeper—Continuous Trip.—Where an excursion ticket is sold by a railroad company to a passenger at a reduced rate, and upon special conditions, the terms of which are printed on the ticket; and one of the conditions is that it

shall be used "for a continuous trip only," and "is not good to stop off,"—the purchaser who accepts and uses it, is bound to take a train which will carry him continuously through, from one station to the other, both in going and returning, and not to stop off at an intermediate station while going either way: *Johnson* v. *Phila., Wilm. & Balto. Railroad Co.*, 63 Md.

If the passenger on his return knowingly takes a train which does not go as far as the station at which he purchased his ticket, and with the intention of stopping off at an intermediate station, the officers of the company are justified in refusing to accept the return coupon of the ticket for his fare, and in putting him off the train on his refusal to pay the regular fare demanded, or to produce a proper ticket to the station he intended to stop at: *Id.*

And it is no excuse for his refusal, that he went to one of the gatekeepers at the station where he took the train, who examined his ticket and negligently assigned him to the wrong train: *Id.*

In the absence of proof that the gatekeeper had authority to vary the terms of contracts for the company, the passenger cannot get rid of the conditions of his contract by showing that he relied on the actual or implied direction to take the train, given either through the belief of the gatekeeper that the ticket was good for the train, or through his negligence, ignorance or mistake: *Id.*

CONFLICT OF LAWS. See *Corporation; Husband and Wife.*

CORPORATION. See *Removal of Causes.*

Individual Liability of Officers for Wrongs done by their order—Evidence—Retention of Servant.—If an officer of a private corporation performs an illegal act, or such act is performed by his orders where he has authority to control the servant doing the act, and such illegal act results in injury to another, the officer directing the act will be individually liable in damages to the injured person: nor will he be exonerated from such liability from the fact that the corporation may also be liable: *Peck* v. *Cooper*, 112 Ill.

Where the president of an omnibus line, an incorporated company, promulgated an order to its drivers to exclude all colored persons from riding in their conveyances, and in pursuance of such order a driver ejected the plaintiff, who was a colored person, from his omnibus, thereby inflicting a personal injury, it was *held*, that the president individually was liable to the plaintiff for the damages received: *Id.*

The retaining of a servant of a company after knowledge is brought home to the officer or agent of the company of his misconduct resulting in a personal injury to another, or failing to discharge him for negligence, &c., has been held admissible in evidence, when the fact was known to the officer or agent of the company having power to dismiss the negligent servant, as characterizing the *animus* of those controlling the company, and as an ingredient in the measure of damages: *Id.*

Liability of Stockholders to Creditors—Bill to enforce—Parties—Foreign Receiver.—A foreign insolvent corporation owing debts, if still in existence, can be compelled, by mandamus or bill in equity, to collect its unpaid subscriptions wherever the stockholders may reside; and if it has ceased to exist, a receiver should be appointed, and the courts of

other states, as a matter of comity, would recognise the right of the receiver, the same as they would the corporation itself if still in existence, to prosecute actions at law for the recovery of unpaid subscriptions: *Patterson* v. *Lynde*, 112 Ill.

Unpaid subscriptions are a trust fund for the payment of the debts of the corporation, which is the trustee. When, therefore, the corporation has ceased to exist, then, upon a principle that a trust shall not fail, a court of equity will take jurisdiction and wind up its affairs: *Id.*

To enforce the liability of the stockholder for his unpaid stock, it is indispensable that the corporation (or, if it has ceased to exist, all its stockholders and creditors), should be before the court so as to be bound by its orders and decrees, and so that complete justice may be meted out to all, and all conflicting rights and equities finally adjusted: *Id.*

A bill was filed in the circuit court by creditors of an insolvent private corporation of the state of Oregon, against defendants, as stockholders. The complainants alleged the recovery of a judgment at law in Oregon against the company, and its insolvency, and their inability to obtain a judgment at law in this state, and also alleged that the defendants owed large sums on their subscriptions to the capital stock of the company, and sought a decree against them for the same, to satisfy complainant's demands. The court below sustained a demurrer to the bill: *Held*, that the demurrer was properly sustained, for the reason of its being impossible to acquire jurisdiction of the corporation, and the non-resident stockholders having no property here: *Id.*

While this court has held that a foreign receiver should not be permitted, as against the claims of creditors resident in another state, to remove from such state the assets of the debtor, yet when resident creditors have no fixed legal claim to the property, he may be allowed, as a matter of comity, to remove the same. This is consistent with the right of a receiver appointed in a foreign state, when creditors have not liens thereon, to sue in our courts for unpaid subscriptions, and collect the same, subject to the order of the court appointing him: *Id.*

Liability for issuing Certificate of Stock—Forged Transfer.—A corporation by issuing stock, declares to the world by its certificate that the person in whose name it stands is the holder of the number of shares which the certificate states him to be; and that it is issued with the intention that it shall be so used and acted upon; and the company is thereby liable to any one who has accepted the same and acted thereon to his injury: *Metropolitan Savings Bank* v. *Mayor and City Council of Baltimore*, 63 Md.

But it is only to the extent that loss has actually been incurred through the misrepresentation made by the certificate that it will be made good: *Id.*

Criminal Law.

Evidence—Identification by Voice alone.—At the trial of a criminal case, the testimony of a witness, identifying the defendant by his voice, whom the witness has heard speak only once before the occasion of the commission of the offence charged, which was after dark, is competent, and may be considered by the jury in connection with other evidence of identity: *Commonwealth* v. *Hayes*, 138 Mass.

Possession of Stolen Property—Presumption.—If pigeons are stolen from the house in which they were confined by the owner, and are found in the possession of a person who bought them of another about two weeks after the larceny, the latter may be convicted of such larceny if his possession of the pigeons is not satisfactorily explained: *Commonwealth* v. *Deegan*, 138 Mass.

Damages.

Evidence—Pecuniary Circumstances of Defendant.—On the trial of an action of trespass for an assault and battery, the plaintiff may give in evidence the pecuniary circumstances of the defendant to enhance his damages, and in such case the defendant may give counter evidence on the subject; but unless such evidence is given by the plaintiff the defendant has no right to introduce proof on that subject, even in mitigation of damages: *Mullin* v. *Spangenberg*, 112 Ill.

Deed.

Grantor's Control over it until it takes effect.—A mother was induced by her son, while she was in a feeble state of mind, to execute a deed to him for her land, including her homestead, under the assurance and belief that it would not take effect until recorded, and the grantee agreed not to procure the same to be recorded during the life of the grantor: *Held*, the deed would not take effect as to the grantee, and the grantor might destroy the same at pleasure: *Sands* v. *Sands*, 112 Ill.

Descent.

Inheritance of Illegitimate Children—Conflict of Laws.—At common law a bastard has no right of inheritance, being regarded as *filius nullius;* and this rule is in force in this state. A bastard in this state cannot inherit from its father, unless he shall have married the mother and acknowledged the child as his own, but the child may, under the statute, inherit from its mother: *Stoltz* v. *Doering*, 112 Ill.

The descent and heirship of real estate are exclusively governed by the laws of the country within which the property is actually situated. No person can take, except those who are recognised as legitimate heirs by the laws of that country, and they take in the proportions and the order which those laws prescribe. Although a bastard may be entitled in Germany, where born, to inherit from his father, he cannot inherit real estate from him situate in this state: *Id.*

Devise. See *Will.*

Ejectment. See *United States.*

Equity.

Mistake of Law— When relieved against.—A favorite son, taking advantage of his mother's affection, induced her to make a conveyance of all her estate to him, upon the assurance of the son that the deed was in the nature of a will, and would not take effect in her lifetime. The mother was, at the time, of the age of seventy-three years, and greatly weakened in the body and mind from disease and sickness, so as to be incapable of transacting business, and the proof showed the deed was not intended by her to have effect before her death, but was handed to the

son to be placed with her papers, and upon her recovery she destroyed the deed. *Held*, that the trial court erred in decreeing that the mother execute another deed in place of the one she had destroyed, and in dismissing her cross-bill to have the conveyance made set aside: *Sands* v. *Sands*, 112 Ill.

EVIDENCE. See *Corporation; Criminal Law; Damages; Witness.*

General Character of Witness—Presumption of Payment of Due Bill held by Maker.—A party cannot call and examine witnesses to support the general character of another witness, or himself, as a witness, for truth and veracity, until the character of the witness thus sought to be supported has been directly assailed. Mere contradictions or different versions by witnesses do not justify the application of the rule that evidence may be given favorable to a witness' character for truth. It is only when witnesses are called who testify that his general character for truth is bad, that witnesses may be introduded in support of his general character: *Tedens* v. *Schumers*, 112 Ill.

The fact that a due bill is found in the hands of the maker is *prima facie* evidence of its payment, and the payee suing on the same is required to overcome the presumption by a preponderance of evidence, before he can recover. In a suit to recover an alleged indebtedness, the plaintiff must prove the defendant owes him, by a preponderance of evidence: *Id.*

And if the plaintiff shows, by a preponderance of evidence, that the defendant owes him on a due bill, notwithstanding its surrender to the latter, then the defendant must overcome that evidence by a preponderance, to defeat a recovery: *Id.*

So it is error to refuse an instruction, in a suit to recover a debt which is denied by the pleading, that the plaintiff must make and establish his case by a preponderance of the evidence, and unless he has done so the jury should find for the defendant: *Id.*

HUSBAND AND WIFE. See *Witness.*

Marriage—What constitutes.—In the absence of any statutory prohibition, a marriage at common law may be had *per verba futuro cum copula;* but the *copula* must be in fulfilment of the agreement to marry, or in consummation of such a contract. The fact that sexual intercourse occurs after the agreement to marry at some future day, is not of itself sufficient to establish the marriage relation. To be availing, the parties, at the time of the *copula*, must then have accepted each other as husband and wife: *Stoltz* v. *Doering*, 112 Ill.

Attachment—Property of Wife—Judgment against Railroad for Injuries to Wife.—A judgment obtained by a husband and wife against a railway company, for injuries sustained by the wife, cannot be attached for a debt due by the husband, being exempted from execution in virtue of sect. 43, of art. 3, of the Constitution, which provides that "the property of the wife shall be protected from the debts of the husband": *Clark* v. *Wootton*, 63 Md.

INSURANCE.

Pleading—Declaration—Assignable Interest—Assignee—Right to Sue—Complete Premiums—Payment one-half in Cash and one-half in

Note—Ninety-Days Clause—Interest.—If a declaration on a policy of life insurance refers to the policy without annexing a copy, and does not set up any contract inconsistent with the policy, an objection, taken when the policy is offered in evidence, that there is a variance between the policy and the declaration, cannot be maintained: *Pierce* v. *Charter Oak Life Ins. Co.*, 138 Mass.

If a declaration on a policy of life insurance, which refers to the policy, is not demurred to, it is no ground of exception to the admission of the policy in evidence, that the declaration construed in connection with the policy is ambiguous: *Id.*

A declaration on a policy of life insurance need not allege facts which defeat a part of the plaintiff's claim under special provisions of the policy: *Id.*

A policy of life insurance on the life of A. was payable on his death to his wife and children, and their assigns; and, if he survived a certain day, was payable to him: *Held*, that he had an assignable interest in the policy: *Id.*

A policy of life insurance provided that, if assigned, written notice should be given to the insurer. An assignment was made, notice was given, and the insurer acknowledged notice thereof: *Held*, that this did not amount to a promise, on the part of the insurer, to pay the assignee, and that he could not maintain an action on the policy in his own name: *Id.*

A policy of insurance, in consideration of the payment of an annual premium, insured the life of A. in a certain sum, "or after the due payment of premium for two or more years, if default shall be made in the payment of any subsequent premium, for as many tenth parts of the original sum insured as there shall have been complete annual premiums paid." In the margin of the policy were words and figures denoting that one-half the annual premium was payable in cash, and one-half by note: *Held*, that these words and figures formed part of the policy, and that, if annual premiums were paid one-half in cash and one-half by note, "complete annual premiums" were paid: *Id.*

In an action at law on a policy of life insurance payable at a day named in the policy, evidence is inadmissible, in defence, to show that a different day should have been written: *Id.*

In an action on a policy of life insurance, payable if the person whose life is insured survives a certain day, the plaintiff can recover interest only from the date of the writ, unless in his declaration he alleges a demand before that time: *Id.*

If a policy of life insurance is payable ninety days after due notice and satisfactory evidence of the death of the person whose life is insured, or, if he survives a certain day, is then payable to him, the ninety-days clause has no application to the latter contingency, and interest is not payable except as damages for wrongfully withholding the money: *Id.*

Mutual Benevolent Association—Death Assessment—Forfeiture of Membership—Notice—Sickness as an Excuse for Default—Waiver.—Y. was a member of a Mutual Benevolent Association, whose object was to provide and maintain a fund for the benefit of the widows and orphans of deceased members. By one of its articles it was provided that upon the death of a member of the association, the secretary should notify each

member, and thereupon each member should "within thirty days from the date of said notice pay to the secretary the sum of one dollar and ten cents, and in case he neglect or refuse to pay the same, his name shall be erased from the roll of members, and he shall forfeit all claims upon the association; nevertheless any member may be reinstated by giving such excuse himself or through his representative, for failing to pay his assessment as may be satisfactory to the board of directors." It was further provided that "a notice directed and sent to the post-office address or to the residence of a member as recorded in the books of the secretary, shall be deemed a legal notice." On the 29th of August 1882, a notice of that date of assessments for and in respect of the death of two members, was directed and sent to the post-office address of Y., requiring him to pay said assessments within thirty days from the date of such notice. No payment or tender of the assessment was made, and Y. died two days after the expiration of the thirty days from the date of the notice. He was taken sick on the 13th of September 1882, and was for the most of the time between that date and the time of his death, in a state of delirium, and entirely incapable of attending to business. In an action against the association, brought by the widow of Y., it was *held:* 1st. That the obligation to pay the death assessment was personal to the member, and the payment was to be made by him as such, and in case of his default he ceased to be a member, and forfeited all claim upon the association. 2d. That the notice directed to Y. having been duly mailed on the day of its date, there was no necessity for proving its actual receipt by him. 3d. That the full thirty days having expired without payment, and the party having died two days thereafter, he was not a member at the time when he died, having by his default lost his membership and all the benefits appertaining thereto. 4th. That the fact that he was part of the time sick and wholly unable to attend to business, constituted no sufficient legal excuse for the default whereby this consequence was produced. 5th. That there was nothing in the case that could be fairly construed to operate as a waiver on the part of the association, of its right to insist upon the forfeiture under said article: *Yoe* v. *Benjamin C. Howard Masonic Mut. Ben. Ass.*, 63 Md.

Malicious Prosecution.

False Imprisonment—Improper Motive—Lawful Warrant.—A person who has procured the arrest and imprisonment of another on a lawful warrant is not liable to an action for false imprisonment, although his object in making the complaint upon which the warrant was issued was to enforce the payment of a debt: *Mullen* v. *Brown*, 138 Mass.

Master and Servant. See *Corporation.*

Mechanics' Lien.

What required to give a Lien on Property of a Railroad Company.—Ordinary lien laws giving to mechanics and laborers a lien on buildings, including the lot upon which they stand, or a lien upon a lot or farm or other property for work done thereon, or for materials furnished in the construction or repair of buildings, should not be interpreted as giving a lien upon the roadway, bridges, or other property of a railroad

company, that may be essential in the operation and maintenance of its road for the public purposes for which it was established: *Buncombe County Commissioners* v. *Tommey*, S. C. U. S., Oct. Term 1884.

MORTGAGE.

Account between Mortgagor and Mortgagee—Adverse Possession by Mortgagee.—As between mortgagor and mortgagee, where the latter is in possession in the acknowledged character of mortgagee, the principles are plain and well defined, and are applied for the mutual benefit of both parties. But where the possession is held adversely to the mortgagor, with denial of the right of redemption, the principles of the account are quite different, and are applied with more or less rigor against the wrongdoer, according to the circumstances of the case: *Booth* v. *Baltimore Steam Packet Co.*, 63 Md.

Purchase by Mortgagee—Merger—Foreclosure of subsequent Mortgage.—If the owner of land, who holds it subject to two mortgages made by his predecessors in title, conveys it, reserving an easement therein, to the first mortgagee, by a warranty deed, in which the grantee assumes and agrees to pay both mortgages and to hold the grantor harmless therefrom, the first mortgage is extinguished; a foreclosure of that mortgage by a sale under a power contained therein, is invalid; and the second mortgagee may maintain a writ of entry against the first mortgagee to foreclose the second mortgage: *Kneeland* v. *Moore*, 138 Mass.

NEGLIGENCE. See *Common Carrier; Corporation.*

OFFICER. See *Corporation.*

PARTITION.

Right to—Discretion of Court.—Where a case is fairly brought within the law authorizing a partition, the right to partition is imperative, and absolutely binding upon courts of equity. They are not clothed with such discretion as that, under a given state of facts, they may grant the relief or refuse it, and yet commit no error. To invoke this equitable remedy is a matter of right, and not of mere grace: *Hill* v. *Reno*, 112 Ill.

In the event that a partition could be effected only through the instrumentality of a sale of the premises and a distribution of the proceeds of such sale among the several parties in interest, the mere fact that difficulties may arise in the adjustment of the distribution, or inconveniences, or even possible losses result from the change in the relations of the parties to the estate, by reason of a sale, will in nowise affect the absolute right to have partition. *Id.*

PARTNERSHIP. See *Agent.*

Notice of Dissolution—Evidence.—In an action ugainst the members of a partnership upon a promissory note, and on an account annexed for goods sold and delivered, if one of the issues is whether the plaintiff had notice of the dissolution of the partnership, a notice of such dissolution published in a newspaper is competent, in conuection with other evidence tending to show that the plaintiff saw and read the notice: *Smith* v. *Jackman*, 138 Mass.

In an action against the members of a partnership upon a promissory note, and on an account annexed for goods sold and delivered, one of the issues was whether the plaintiff had notice of the dissolution of the partnership. He testified that he had no knowledge of such dissolution until after the bringing of the action. One of the partners, who alone defended the action, was allowed to put in evidence certain bills or statements of account for goods sold and delivered to him personally by the plaintiff at various times after the cause of action had accrued. *Held*, that the plaintiff had no ground of exception: *Id.*

PATENT.

Re-issue—Delay in applying for—Decision of Patent Office—General Demurrer.—The bill set out the grant of the original letters patent and their invalidity by reason of an insufficiency or defect in the specification which had arisen through inadvertence, accident or mistake; their surrender and the granting of re-issued letters, after a decision by the patent office board of appeal that the delay in the application for the re-issue (more than five years) had been sufficiently and satisfactorily explained, and that there was not in the renewed application any attempt to enlarge the scope of the invention beyond what was originally disclosed. On general demurrer, *held:* that the question whether the delay had been reasonable or unreasonable was for the court to determine, that the decision of the patent office could not avail the complainant, and that no special circumstances having been shown to account for and excuse the delay the re-issue must be considered void and the bill dismissed: *Wallersak* v. *Reihrer*, S. C. U. S., Oct. Term 1884.

POSSESSION.

Adverse Possession by Fraudulent Grantor as against Grantee—Evidence—Assessment of Taxes.—If A. is entitled to a conveyance of land, and, by an agreement between A. and B., in order to defraud A.'s creditors, the land is conveyed to B., a title to the land by adverse possession of more than twenty years may be acquired by A. against B., although A. is without means to pay his debts during such possession, if B. knows that A. is holding the land adversely and under a claim of right during his possession: *Elwell* v. *Hinckley*, 138 Mass.

At the trial of a writ of entry, if the demandant relies upon a title acquired by his grantor by adverse possession, the books of the assessors of taxes of the town in which the land lies are admissible in evidence for the purpose of showing that the land was assessed to the demandant's grantor during the period of the alleged adverse possession: *Id.*

RAILROAD. See *Agent; Common Carrier; Mechanics' Lien.*

RECEIVER. See *Corporation.*

REMOVAL OF CAUSES.

Separate Controversy—Contest over Ownership of Stock—The Corporation a Necessary Party.—A suit in equity brought by C., a citizen of one state, against the corporation of the same state, and T., a citizen of another state, and W., to obtain a decree that C. owns shares of the stock of the corporation standing in the name of W., but sold by him to T., and that the corporation cancel on its books the shares standing

in the name of W., and issue to C. certificates therefor, cannot be removed by T. into the Circuit Court of the United States, under section 2 of the act of March 3, 1875 (18 St. 479); because the corporation is an indispensable party to the suit, and is a citizen of the same state with C.: *Crump* v. *Thurber*, S. C. U. S., Oct. Term 1884.

Corporations Created by the United States—Suits arising under the Laws thereof.—Such corporations as the Union Pacific Railway Company and the Texas and Pacific Railway Company, created by and organized under Acts of Congress, are entitled, under the act of March 3d 1875, to remove suits brought against them in the state courts, into the United States Circuit Courts, on the ground that such suits are suits "arising under the laws of the United States:" *Pacific Railroad Removal Cases*, S. C. U. S. Oct., Term 1884.

Separate Controversy—Actions in Tort against several Defendants who file separate Answers.—An action for damages for the malicious prosecution of a previous action, which had been commenced by a writ of attachment brought in a state court against several defendants who separate in their answers, cannot be removed under the second clause of § 2 of the act of March 3, 1875, into the United States Circuit Court by one party of the defendants on the ground that the plaintiffs and themselves are citizens of different states and that there is in the cause a controversy wholly between them: *Pirie* v. *Toedt*, S. C. U. S., Oct. Term 1884.

SUBROGATION. See *Bank.*

UNITED STATES.

Pre-emption Land—Patent therefor—Impeachment of.—It is the duty of the land department, of which the secretary of the interior is the head, to determine whether land patented to a settler is of the class subject to settlement under the pre-emption laws, and his judgment as to this fact is not open to contest by a mere intruder without title, in an action at law brought by the patentee to recover possession: *Ehrhardt* v. *Hogaboon*, S. C. U. S., Oct. Term 1884.

Jurisdiction—Citizenship—Creditor's Sale—Addition as Plaintiffs of Citizens of the same State as Defendants.—A United States Court having obtained jurisdiction on the ground of citizenship of a creditor's bill, will not lose it because others are added as plaintiffs, and it does not thereafter appear that the controversy is wholly between citizens of different states. Other creditors coming in under such a bill can either become co-complainants, or appear before the master under a decree ordering a reference to prove the claims of all persons entitled to the benefit of the decree: *Stewart* v. *Dunham*, S. C. U. S., Oct. Term 1884.

WITNESS.

Prochein Ami—Husband and Wife.—A *prochein ami* is not a party to the suit within the meaning of the clause of the Evidence Act, which declares that where an original party to a contract or cause of action is dead, or where an executor or administrator is a party to the suit, neither party shall be admitted to testify on his own offer, or upon the call of his co-complainant or co-defendant otherwise than now by law allowed, unless a nominal party merely: *Trahern* v. *Colburn*, 63 Md.

In an action against an executor by a married woman suing by her husband as her next friend, he is a competent witness in her behalf: *Id.*

And the fact that he was directly interested in fixing a liability upon the estate of the deceased, because of his liability over to his wife in respect of the transactions as her agent, does not exclude him from testifying: *Id.*

WILL.

Devise to Heirs at Law—Distribution per stirpes.—A testator devised all his estate to his wife during her life, and after her death directed that $1000 be paid to his daughter, and gave to his daughter-in-law (the widow of his deceased son), a lot, and then directed, "the remainder of my estate to be divided equal among my heirs at law." The widow was dead when a partition was asked, and it appeared that the testator had but two children, a daughter still living, and a son who died before the testator, leaving children: *Held*, that his heirs took *per stirpes*, and not *per capita*, in the remainder of the estate, so that the daughter took one-half and the heirs of the son the balance: *Kelley* v. *Vigas*, 112 Ill.

Where a devise is made to a class of persons not named, as "heirs at law" of the testator, so that reference has to be made to the statute to ascertain the persons who constitute his heirs, the provisions of the statute as to the quantity each shall take must also govern. In such case the estate devised will be divided among his heirs, as in cases of intestacy: *Id.*

LIST OF THE PRINCIPAL NEW LAW BOOKS.

BIGGS.—General Railway Acts. A Collection of the Public General Acts for the Regulation of Railways; Including The Companies, Lands and Railway Clauses Consolidation Acts, Complete 1830-84. Edited by JAMES BIGGS. 14th ed. as amended to close of Sess. 1884. 16mo., pp. 823. Westminster: Waterlow and Sons, Limited.

BISHOP.—Prosecution and Defence. Practical Directions and Forms for the Grand Jury Room, Trial Court and Court of Appeal in Criminal Causes, with full Citations of Precedents from the Reports and other Books, and a General Index to the Author's Series of Criminal Law Works. By J. P. BISHOP. 8vo., pp. 856. Boston: Little, Brown & Co.

BUSWELL.—The Law of Insanity in its Application to the Civil Rights and Capacities and Criminal Responsibility of the Citizen. By H. F. BUSWELL. 8vo., pp. 595. Boston: Little, Brown & Co.

CHALLIS.—The Law of Real Property, chiefly in relation to Conveyancing By H. W. CHALLIS. 8vo., pp. 424. London: Reeves & Turner.

EVERSLEY.—The Law of The Domestic Relations, including Husband and Wife; Parent and Child; Guardian and Ward; Infants; and Master and Servant. By W. P. EVERSLEY. 8vo., pp. 1097. London: Stevens & Haynes.

FLANDERS.—An Exposition of the Constitution of the United States. By HENRY FLANDERS. 4th ed. Revised. 12mo., pp. 318. Philadelphia: T. & J. W. Johnson & Co.

HAWKINS.—A Concise Treatise on the Construction of Wills. By F. V. HAWKINS. With Notes and References to American Decisions, by J. SWORD. 2d Am. ed. with additional Notes and References, by F. M. LEONARD 8vo., pp. 355. Philadelphia: T. & J. W. Johnson & Co.